IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH.

I.T.A. No. 147 of 2007

DATE OF DECISION: 3.5.2007

The Commissioner of Income Tax, Faridabad

...Appellant

Versus

M/s Lakhani India Ltd., Faridabad

…Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE RAJESH BINDAL

PRESENT: Mr. Yogesh Putney, Advocate
for the appellant-revenue.

JUDGMENT

M.M. KUMAR, J.

In this appeal filed under Section 260A of the Income Tax Act, 1961 (for brevity, 'the Act'), the prayer made is that the order dated 28.4.2006, passed by the Income Tax Appellate Tribunal, Delhi Bench 'D', New Delhi (for brevity, 'the Tribunal'), in ITA No. 4492/D/1999, for the assessment year 1996-97, is not in accordance

with law and suffers from various illegalities. It is claimed that following substantial questions of law would arise therefrom for consideration of this Court:-

1. Whether, on the facts and circumstances of the case, the ITAT was right in upholding the order of CIT (A), deleting the disallowance made by the Assessing Officer of Rs. 4,02,476/- from entertainment expenses, u/s 37(2A) of the Act?
2. Whether in view of the facts and circumstances of the case, the ITAT was right in upholding the order of CIT (A), deleting the disallowance of Rs. 15,04,744/- made by Assessing Officer on account of advertisement and sales promotion expenses u/s 37(2A) of the Act?
3. Whether the ITAT was right in upholding the view of CIT (A) while ignoring the fact that disallowance under the head in previous years has no bearing, as each assessment year is to be looked at independently?
4. Whether the ITAT was right in not giving any specific finding regarding the allowability of the said expenditures incurred on customers meet with reference to section 37(2A) of the Act?

In sum and substance all the questions contemplates the allowances admissible to the assessee on account of entertainment

expenses, advertisement, sales and promotion expenses and expenditure incurred on customers within the meaning of Section 37 (2A) of the Act.

The assessee filed its return of income on 29.1.1997 declaring its income of Rs. 4,31,63,460/-. The assessment was completed under Section 143(3) of the Act on 31.3.1999 at an income of Rs. 5,33,02,790/-, which was reduced to Rs. 4,32,38,730/- by giving effect to the order of the CIT (A), passed in Appeal No. 133/99-2000, dated 2.9.1999. The revenue preferred an appeal before the Tribunal, which had restored few issues to the file of Assessing Officer and dismissed the appeal on the following issues:-

> "(i) Disallowance of Rs. 4,02,476/- made on account of entertainment expenses.
>
> (ii) Disallowance of Rs. 15,04,744/- made out of advertisement expenses and sales promotion expenses."

The Assessing Officer disallowed Rs. 4,02,476/- on account of advertising expenses and sales promotion expenses by treating the same as entertainment expenses. The CIT (A) deleted the disallowance by observing that the customers meets are organized for the purpose of sales promotion and it is customary to present gift items on such functions for publicity wholly and exclusively for business purposes. The genuineness of the expenses was also not doubted and, therefore, the Tribunal upheld the view taken by the CIT (A).

The Assessing Officer also disallowed a sum of Rs. 15,04,744/- out of the advertisement expenses and sales promotion expenses to the sister concern of the assessee, namely, M/s Lakhani Sales Corporation by following his own order passed in the case of above mentioned sister concern for the assessment year 1996-97. The CIT (A) has deleted the disallowance by adopting the reasoning that the expenses of the same nature have been allowed to the assessee in earlier assessment years also and such disallowance has never been made by any Assessing Officer in the previous year and accordingly the aforementioned amount of disallowance was ordered to be deleted. The Tribunal confirmed the order of the CIT (A) and rejected the appeal of the revenue with the observation that no material could be brought on record by the revenue to controvert the finding of CIT (A).

We have heard learned counsel for the revenue and have perused the paper book.

Learned counsel appearing for the revenue submits that ITA No. 232 of 2006 in the case of the assessee, involving similar question has been dismissed by this Court on 9.1.2007. The Division Bench upheld the expenses incurred on travel abroad to keep abreast with latest trends and fashion in the manufacture of footwear as it was considered to be in furtherance of business prospects. The view of the Division Bench in the concluding part reads as under:-

> " We find no illegality or perversity in the aforementioned reasoning, as regards the necessity to

> travel abroad, to keep abreast with latest trends and fashion in the manufacture of footwear. The failure of the assessee to substantiate the purpose of his visit, led to the ITAT to restore the disallowance to the extent of Rs. 68,832/-. We are unable to discern any question of law, much less a substantial question of law that would require adjudication by this Court. However, it would also be necessary to refer to an important fact, recorded by the ITAT. A similar allowance for foreign travel was permitted to the assessee, in the preceding assessment years. Though particulars of travel are bound to differ from year to year, the principle in essence remains the same, namely; the allowance of expenditure on foreign travel to keep abreast of latest trends in the footwear industry. Consequently, the impugned order does not call for any interference."

The reasoning adopted by the Division Bench, namely, that such like expenses have been allowed in the earlier assessment years and that expenses on advertisement were aimed at for sale promotion as well as expenses by organizing the customer meets for the purposes of sale promotion would also be admissible and could not be disallowed. Consequently, the same could not have been deleted and the Tribunal has taken the correct view. Therefore, we do not find that any substantial question of law would arise, warranting admission of the appeal. Consequently, the appeal fails and the same

is dismissed.

(M.M. KUMAR)
JUDGE

(RAJESH BINDAL)
JUDGE

May 3, 2007
Pkapoor